

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of )  
 )  
The Wireless Telecommunications Bureau and )  
the Office of Engineering and Technology Seek )  
Comment on Progeny's M-LMS Field Testing )  
Report )

WT Docket No. 11-49

To: Chief, Wireless Telecommunications Bureau and  
The Chief, Office of Engineering and Technology

**OPPOSITION OF PROGENY LMS, LLC**

Progeny LMS, LLC ("Progeny"), by its attorneys, hereby opposes the second request of Skybridge Spectrum Foundation, Telesaurus Holdings GB LLC and the other affiliated entities held by Warren Havens (hereinafter "Havens") for the Commission to extend the deadline for the filing of reply comments in this proceeding.<sup>1</sup>

Havens' second extension request is particularly egregious because (1) it presents absolutely no relevant facts or arguments beyond those specifically rejected in the Bureau's Order of March 14, 2012 denying Havens' first extension request, (2) Havens' extension request appears to disregard the purpose of the established pleading cycle, and (3) this second request is exactly the kind of repetitious pleading that the Commission has warned Havens against. For these reasons, the Commission should promptly deny Havens' second extension request and admonish Havens that he should not use the Commission's administrative rules to harass Commission licensees.

---

<sup>1</sup> See *Comments on the Progeny Test Report And Request to Extend the Deadline for Replies to Comments*, Skybridge Spectrum Foundation and Telesaurus Holdings GB LLC (filed March 15, 2012) ("*Havens Second Extension Request*"). A copy of this Opposition is being sent to Havens by email today.

**I. THE COMMISSION SHOULD DENY HAVENS' RENEWED EXTENSION REQUEST BECAUSE IT CONSISTS SOLELY OF ARGUMENTS THAT THE COMMISSION FOUND INSUFFICIENT IN HIS FIRST REQUEST**

The Commission issued an Order on March 14, 2012 addressing Havens' first extension request, concluding that "[w]e do not find that the arguments presented by SkyTel warrant granting an extension" on the reasoning that "the general nature of SkyTel's assertion that the Report is lengthy and complicated does not persuade us that an extension should be granted."<sup>2</sup> The Order further concluded that Havens' additional arguments were extraneous and that "allegations relating to Progeny's status as a licensee, assertions that the Report is an impermissible *ex parte* presentation, and other matters regarding the process used in the preparation of the Report" had no bearing on whether to extend the period for comments and reply comments, and did not merit addressing.<sup>3</sup>

Despite the Commission's clear rejection of both the merit and the relevance of his arguments offered for extension, Havens nonetheless bases his renewed request explicitly on these same assertions.<sup>4</sup> Havens offers neither clarification nor expansion of the arguments that the Commission rejected in its Order, merely invoking them verbatim by reference to the earlier pleading, a pleading which he acknowledges was denied by the Commission.<sup>5</sup>

---

<sup>2</sup> See *Request by Progeny LMS, LLC for Waiver of Certain Multilateration Location and Monitoring Service Rules*, Order, DA 12-400, ¶ 3 (rel. March 14, 2012) ("*Extension Denial Order*").

<sup>3</sup> *Id.*, ¶¶ 2-3.

<sup>4</sup> *Havens Second Extension Request* at 1.

<sup>5</sup> *Id.*

As in the first extension request and reply in support of it, Havens again discusses a diverse array of issues unrelated to the propriety of an extension.<sup>6</sup> These issues, regardless of any potential relevance as substantive comments, continue to have “no bearing” on whether Havens merits an extension of time. The Commission acknowledged their irrelevance by noting their presence in a footnote but declining to discuss them.<sup>7</sup>

Further, Havens has incorporated by reference his claims from the first extension request that additional time is warranted because “[t]here is clearly no timing need to not grant” Havens’ extension request.<sup>8</sup> As Progeny observed in its reply, in making this argument Havens disregards the upcoming July 19, 2012 build out deadline for M-LMS licenses. This deadline makes it important that this proceeding move forward promptly so Progeny may concentrate on constructing its network.

Finally, Havens’ perfunctory closing reference to the “good causes shown—in the public interest” [sic] is unsupported by any actual assertions in the extension request and is insufficient to invoke the public interest as a justification for extension.<sup>9</sup> In contrast, the Commission has observed in its E911 location accuracy proceeding that “we consider indoor location accuracy to be a significant public safety concern that *requires* development of indoor technical solutions

---

<sup>6</sup> *Id.* at 2-7 (asserting arguments related to “Failures of Test Purpose and Purpose Requirements”, “Failure to Test all of the Spectrum and the Uses of the Other 4 MHz”, “Failure to Test In Relation to Other M-LMS and Other Non-Part 15 Uses”, “Location Tech and System Are Not Designed for Real Use”, among others).

<sup>7</sup> *Extension Denial Order*, ¶ 2 n.7.

<sup>8</sup> *See Request to Extend Dates for Comments and Replies*, Skybridge Spectrum Foundation and Telesaurus Holdings GB LLC, ¶ 5 (filed March 12, 2012) (“*Havens First Extension Request*”).

<sup>9</sup> *Id.*, ¶ 7.

and testing methodologies to verify the effectiveness of such solutions.”<sup>10</sup> Progeny and its affiliate companies are working aggressively to construct an M-LMS network that will provide these critically needed indoor location accuracy capabilities. The need for such capabilities to support public safety is immediate and growing, and represents an acknowledged and urgent public interest. Therefore, the Commission should not permit Havens’ efforts at delay and harassment to interfere with the needs of public safety.

## **II. HAVENS’ EXTENSION REQUEST APPEARS TO DISREGARD THE PURPOSE OF THE ESTABLISHED PLEADING CYCLE**

Havens’ extension request indicates that Havens contemplates submitting “reply comments” on behalf of an additional entity thus far unknown to the proceeding “V2G LLC.”<sup>11</sup> To the extent this new entity raises points different from those already present in the Havens comments, Havens’ V2G LLC filing would constitute late-filed initial comments, and not reply comments. This disregard for the established pleading cycle contradicts clear Commission instructions and will facilitate neither administrative efficiency nor the development of a complete record.

Commission rule 1.415(c) provides that “a reasonable time will be provided for filing comments in reply to the original comments.”<sup>12</sup> Section 1.415(d) further emphasizes that “[n]o additional comments may be filed unless specifically requested or authorized by the

---

<sup>10</sup> *Amending the Definition of Interconnected VoIP Service in Section 9.3 of the Commission’s Rules*, GN Docket No. 11-117, *Wireless E911 Location Accuracy Requirements*, PS Docket No. 07-114; *E911 Requirements for IP-Enabled Service Providers*, WC Docket No. 05-196, Notice of Proposed Rulemaking, Third Report and Order, and Second Further Notice of Proposed Rulemaking, FCC 11-107, ¶ 86 (rel. July 13, 2011) (*emphasis added*).

<sup>11</sup> *Havens Second Extension Request* at 2 n.1.

<sup>12</sup> 47 C.F.R. § 1.415(c).

Commission.”<sup>13</sup> The purpose of the comment cycle is to provide all parties with reasonable time to both provide initial arguments and facts and to respond to a *complete record* on reply.<sup>14</sup> Progeny cannot respond to a complete record on reply if Havens files additional comments on the reply comment deadline or thereafter.

Havens claims that his initial comments “complied fully with the non-extended Comments deadline and contributed to the Bureaus Comments precisely as called for” in the Denial Order.<sup>15</sup> Havens, however, supports his request for extension of the reply comment period with promises of “a further, more complete record” which “warrants the time extension in the Request including for Replies.”<sup>16</sup>

Havens’ two assertions are contradictory because full compliance with the Commission’s comment rules requires that a party take care to ensure that its initial comments are complete. As the Commission has repeatedly reminded parties, in order to facilitate development of the best possible record within existing constraints, “interested parties [must] present their positions fully in their initial comments.”<sup>17</sup> Once the initial comment period closes and the scope of the discussion has been defined, “the purpose of reply comments is to permit parties to respond to the original comments.”<sup>18</sup>

---

<sup>13</sup> 47 C.F.R. § 1.415(d).

<sup>14</sup> See, e.g. *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, Order, DA 96-700, ¶ 6 (rel. May 7, 1996) (*emphasis added*) (“*Local Competitiveness Order*”).

<sup>15</sup> *Havens Second Extension Request* at 2.

<sup>16</sup> *Id.* at 1-2.

<sup>17</sup> *Local Competitiveness Order*, ¶ 6.

<sup>18</sup> *Id.*, ¶ 6.

If Havens has complied with the Commission's rules, then Havens' comment is a complete encapsulation of Havens' relevant facts and arguments on the topic. Conversely, if Havens' comment does not capture all of Havens' points on the topic, then Havens' has not complied with the Commission rules.

In dismissing Havens' first extension request, the Commission concluded that Havens' failure to respond expeditiously upon learning about the proceeding was not a sufficient justification for extending the initial comment period.<sup>19</sup> Similarly, Havens' failure to timely file a persuasive request for extension warranted denial under the Commission's rules.<sup>20</sup> If Havens' continued disregard for the rules has resulted in Havens filing an unsatisfactory comment, the Commission has no obligation to insulate Havens from the consequences.

### **III. THE SECOND EXTENSION REQUEST IS EXACTLY THE TYPE OF REPETITIOUS PLEADING THAT THE COMMISSION HAS CAUTIONED HAVENS AGAINST**

Havens' tendency of filing pleadings that are repetitious and irrelevant is well known to the Commission. Despite a clear directive from the Commission that such abuse of Commission process will not be tolerated,<sup>21</sup> Havens' second extension request continues this pattern of presenting cursory or irrelevant justifications and disregarding Commission rejection of irrelevant arguments.

---

<sup>19</sup> *Extension Denial Order*, ¶ 3.

<sup>20</sup> *Id.*

<sup>21</sup> *See Applications to Provide Automated Maritime Telecommunications System Stations at Various Locations in Texas, and Applications to Provide Automated Maritime Telecommunications System Stations at Chaffee, Aspen, Colorado Springs, Copper Mountain, and Leadville, Colorado*, Memorandum Opinion and Order, FCC 12-26, ¶¶ 2-10 (rel. March 12, 2012) ("*Havens Sanctions Order*") (summarizing a decade-long history of repetitive pleadings).

The Commission has explicitly cautioned parties that the Commission's rules "prohibit the filing of frivolous pleadings or pleadings filed for the purpose of delay."<sup>22</sup> A frivolous proceeding is one that lacks "good ground to support it" or is "interposed for delay."<sup>23</sup> The Commission's discussion and rejection of Havens' arguments in the first extension request and his subsequent reference to and incorporation of those same arguments into the second request results in a pleading entirely devoid of good ground to support it. In fact, the Commission sought to curtail exactly this sort of perseverance when it defined frivolous as "based on arguments that have been specifically rejected by the Commission."<sup>24</sup>

Further, the Commission has rejected Havens' assertion that the Report is so particularly "lengthy and complicated" as to warrant an extension. Indeed, no other party has raised this concern or sought an extension, including Progeny itself, the entity seeking the application. By filing multiple extension requests when the Commission and the parties most interested have indicated that further time is not necessary, Havens makes it evident that the true purpose of the filings is not to improve the record or facilitate the preparation of better filings, but solely to delay and harass other parties in the proceeding.

In light of Havens' apparent exhaustion of relevant comments and continuing disregard for Commission process, the Commission would be well justified in exercising its broad discretion to manage the agency's docket to bar Havens from filing any future pleadings as to the

---

<sup>22</sup> See *Commission Taking Tough Measures Against Frivolous Pleadings, Public Notice*, 11 FCC Rcd 3030 (1996) ("1996 Public Notice"); see also *LPTV and TV Translator Digital Companion Channel Applications Non-Mutually Exclusive Proposals (Auction No. 85)*, DA 07-1342 at 3 (March 22, 2007) (reminding all parties that the Commission intends to use its authority fully to deter the filing of frivolous pleadings).

<sup>23</sup> 47 C.F.R. § 1.52.

<sup>24</sup> 1996 Public Notice citing *Implementation of Cable Television Consumer Protection Act*, 9 FCC Rcd 2642, 2657 (1993).

Part 15 Test Report.<sup>25</sup> Even if the Commission declines to issue sanctions in this proceeding, however, the Commission is under no obligation to grant his repetitious extension requests. Instead, the public interest would be well served by promptly denying Havens' extension request and informing Havens that further abuse of Commission process will result in sanctions.

#### **IV. CONCLUSION**

For the reasons provided herein, the Commission should deny Havens' renewed request for an extension of time. Further, the Commission should admonish Havens for attempting to misuse the Commission's public notice process to create delay in this proceeding and harass a Commission licensee.

Respectfully submitted,

**PROGENY LMS, LLC**

By: 

Bruce A. Olcott  
Squire Sanders (US) LLP  
1200 Nineteenth Street, N.W.  
Washington, D.C. 20036  
(202) 626-6615

Its Attorneys

March 20, 2012

---

<sup>25</sup> See *Havens Sanctions Order*, ¶ 13.